

1 RONALD J. TENPAS
2 Assistant Attorney General
3 Environment & Natural Resources Division
4 JEAN E. WILLIAMS, Chief
5 LISA L. RUSSELL, Assistant Chief
6 ROBERT P. WILLIAMS, Trial Attorney (SBN 474730 (DC))
7 U.S. Department of Justice
8 Environment & Natural Resources Division
9 Wildlife & Marine Resources Section
10 Ben Franklin Station, P.O. Box 7369
11 Washington, D.C. 20044-7369
12 Telephone: (202) 305-0206
13 Facsimile: (202) 305-0275

E-FILED - 9/8/08

Attorneys for Federal Defendants

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 HOMER T. MCCRARY, } Case No. 08-cv-1592-RMW
14 Plaintiff, }
15 v. }
16 CARLOS M. GUTIERREZ, ET AL., }
17 Defendants. }
18 _____ }
19
20
21
22
23
24
25
26
27
28

**STIPULATION TO TRANSFER
ADMINISTRATIVE RECORD AND
SUPPLEMENT TO
ADMINISTRATIVE RECORD
AND ORDER**
Date: September 12, 2008
Time: 9:00 a.m. & 10:30 a.m.
Judge: Hon. Ronald M. Whyte
Courtroom 6, 4th Floor

20 Pursuant to Civil Local Rules 7-11 and 7-12, Federal Defendants Carlos Gutierrez,
21 United States Secretary of Commerce, the National Marine Fisheries Service (“NMFS”), and
22 Russ M. Strach, NMFS Assistant Regional Administrator of the Protected Resources Division of
23 the Southwest Region (collectively referred to as “NMFS”), joined by Plaintiff Homer McCrary,
24 respectfully request that the Court transfer the paper copy of the administrative record and the
25 supplement to the administrative record from the case file for *McCrary v. Gutierrez*, No. C 06-
26 04174-JW (N.D. Cal. 2007) (“*McCrary I*”) to the instant case. As grounds for the instant
27 request, the parties agree and stipulate as follows:

1. The *McCrary I* case involved the same parties and legal issues as the instant case.

1 The case was dismissed without prejudice in December 2007 for lack of jurisdiction due to a
2 lack of 60-days written notice of Plaintiff's intent to sue, 16 U.S.C. § 1540(g)(2)(C). *See*
3 *McCrary v. Gutierrez*, 528 F. Supp. 2d 995 (N.D. Cal. 2007). Plaintiff filed the instant lawsuit
4 in March 2008 after providing written notice of his intent to sue.

5 2. In *McCrary I*, NMFS had filed a certified administrative record, in both electronic
6 form (*i.e.*, on CD-Rom) and in paper form (consisting of three binders of documents), on or
7 about November 27, 2006. *See* Dckt. Nos. 22-24. NMFS subsequently filed a supplement to the
8 administrative record on February 22, 2007, in both electronic and paper form. *See* Dckt. Nos.
9 25-26.

10 3. On July 2, 2008, Plaintiff filed motion in the instant case to proceed on the
11 administrative record and briefs from *McCrary I* (Dckt. No. 11).

12 4. NMFS filed an opposition to Plaintiff's motion on July 30, 2008, in which NMFS
13 proposed an expedited litigation schedule for filing its answer, the administrative record, and
14 new cross-motions for summary judgment. *See* Dckt. No. 20. In particular, NMFS proposed
15 filing its administrative record in this case by August 15, 2008.

16 5. As it indicated it would do, on August 15, 2008, NMFS filed the administrative
17 record in the above-captioned case. This administrative record is identical to the administrative
18 record filed in *McCrary I*, save for the new case number and caption information. The
19 administrative record in the instant case was filed in CD-Rom form only.

20 6. Given that the administrative records in *McCrary I* and the instant case are
21 identical, the parties agree that transferring the paper copy of the administrative record and the
22 supplement to the administrative record from *McCrary I* to the instant case is in the interest of
23 justice, as it would conserve government resources by preventing NMFS from having to compile
24 a new paper copy of the administrative record for filing in the instant case.

25 7. Although NMFS stipulates to the transfer the paper copy of the administrative
26 record and the supplement to the administrative record from *McCrary I* to the instant case,
27 NMFS continues to oppose transferring the summary judgment briefs from *McCrary I* to the
28 instant case, and instead would prefer to file updated summary judgment briefs. *See* Dckt. No.

1 20.

2 8. Wherefore, for the reasons set forth above, the parties hereby agree and stipulate
3 to the transfer of the paper copy of the original administrative record from *McCrary v. Gutierrez*,
4 No. C 06-04174-JW (N.D. Cal. 2007) (Dckt. Nos. 22-24), plus the paper copy of the supplement
5 to the administrative record (Dckt. Nos. 25-26) to the above-captioned case.

6 Respectfully submitted: August 19, 2008

7 /s/ Robert P. Williams
8 ROBERT P. WILLIAMS, Trial Attorney (SBN 474730 (DC))
U.S. Department of Justice
9 Environment & Natural Resources Division
Wildlife & Marine Resources Section
10 Ben Franklin Station, P.O. Box 7369
Washington, D.C. 20044-7369
11 Telephone: (202) 305-0206
Facsimile: (202) 305-0275

12 *Attorneys for Federal Defendants*

14 /s/ James L. Buchal
15 James L. Buchal OSB #92161
MURPHY & BUCHAL LLP
16 2000 S.W. First Avenue, Suite 420
Portland, OR 97201
17 Tel: 503-227-1011
Fax: 503-227-1034

18 *Attorney Pro Hac Vice for Plaintiff*

20
21 PURSUANT TO STIPULATION, IT IS SO ORDERED. The Clerk shall transfer the
22 paper copy of the original administrative record from *McCrary v. Gutierrez*, No. C 06-04174-JW
23 (N.D. Cal. 2007) (Dckt. Nos. 22-24), plus the paper copy of the supplement to the administrative
24 record (Dckt. Nos. 25-26) to the above-captioned case.

25
26 Dated: August 8, 2008
27 September

Ronald M. Whyte

28 RONALD M. WHYTE
U.S. District Judge